

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JUSTIN ALLEN MALM,

Petitioner,

v.

MEMORANDUM and ORDER  
07-C-81-S

PHIL KINGSTON,

Respondent.

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Petitioner has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. On March 15, 2007 Respondent moved to dismiss petitioner's petition for failure to exhaust his state court remedies. Petitioner replied on March 21, 2007.

FACTS

Petitioner was convicted in St. Croix County Circuit Court of escape, burglary to a building or dwelling and taking or driving a vehicle without the owner's consent. On April 20, 2005 petitioner was sentenced to two terms of six years imprisonment on the escape and taking a vehicle without the owners consent, each consisting of three years of initial confinement and three years of extended supervision and nine years imprisonment for burglary, consisting of four years of initial confinement and five years of extended supervision, served concurrently to each other but consecutively to the sentence that petitioner was then serving.

Petitioner sought a sentence modification in the circuit court which was denied in August 2005. He then appealed his conviction and the order denying his sentence modification to the Wisconsin Court of Appeals. This appeal is presently pending.

#### MEMORANDUM

Federal district courts are required by statute, for reasons of comity, to defer to state courts in proceedings for writs of habeas corpus. Accordingly, petitioner's petition for a writ of habeas corpus will be dismissed without prejudice to petitioner's refiling his petition after he has exhausted his state court remedies within the meaning of 28 U.S.C. §2254.

Petitioner is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed without prejudice for his failure to exhaust his state remedies. See Newlin v. Helman, 123 F.3d 429, 433 (7<sup>th</sup> Cir. 1997).

#### ORDER

IT IS ORDERED that petitioner's petition for a writ of habeas corpus is DISMISSED without prejudice.

IT IS FURTHER ORDERED that judgment be entered DISMISSING petitioner's petition for a writ of habeas corpus without prejudice.

Entered this 26<sup>th</sup> day of March, 2007.

BY THE COURT:

S/

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JOHN C. SHABAZ  
District Judge